IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

S.A.No. 926 of 2001()

AS.33/1992 of II ADDL. DISTRICT COURT, TRIVANDRUM
OS.461/1987 of I ADDL.M.C.,NEYYATTINKARA
.....

APPELLANT: APPELLANT-2ND PLAINTIFF :

SARASAMMA PILLAI VILASINI AMMA,
ENCHAPURA VEEDU,
HAVING ALSO THEKKEVEEDU,
AVADUTHURA DESOM, KOTTAKAL VILLAGE.

BY ADV. SRI.SUBHASH CYRIAC
` SMT.SHEEBA JOSEPH

RESPONDENTS: RESPONDENTS-DEFENDANTS:
---

1. PAREETHUKUNJU ABDUL RASAK,
   VARUVILAKATHU PUTHEN VEEDU,
   PACHALLOOR DESOM,
   THIRUVALLAM VILLAGE.

2. KRISHNA PILLAI KESAVA PILLAI,
   NJARAVILA PUTHEN VEEDU,
   AVADUTHURA DESOM,
   KOTTUKAL VILLAGE.

3. BHASKARA PILLAI RAJA RAMAN NAIR,
   ADVOCATE, RAMAVILASOM BUNGLOW,
   LEKSHMI NIVAS HILL,
   PACHALLOOR DESOM, THIRUVALLAM VILLAGE.

BY

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

==========

S.A.No.926 OF 2001

==========

Dated this the 22nd day of March,2007

JUDGMENT

By virtue of my decision in C.R.P.No.2201 of 1999 and R.F.A.No.105/2004 I have come to the conclusion that the plaintiff in O.S.No.461/1987 has not succeeded in proving the tenancy right and that the purchaser of the property, namely, Raja Raman Nair has got possession of the property. The subject matter of the second appeal is with respect to the very same property and the court concurrently found that the plaintiff is not entitled to any relief. It is settled principal by virtue of the decision reported in **L.K.Verma V HMT Ltd. & others** (**A.I.R 2006 SC, 1975),** that the second appellate court shall not act as a third court of facts and it should not be a dice in another gamble. As far as this second appeal is concerned, it can be seen that the property originally belong to one Kesava Pillai and in pursuance of an execution of decree obtained by the first defendant in the suit 51 cents of property were sold in auction and it has been taken delivery through court and he is in possession of the property. The case of the plaintiff, namely, Smt. Vilasini Amma, that the lease was of the year 1940 and that Madhavan Pillai was in possession of the property are proved to be false and the courts have found that

she is not entitled to get a decree of injunction. So the factual analysis of the material does not suffer from any irregularity or illegality. Therefore, there is no substantial question of law much less any question of law involved in the second appeal which warrants admission and therefore, the second appeal is dismissed.

M.N.KRISHNAN,JUDGE

dvs